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May 9, 2014

Jeff S. Jordan
Federal Election Commission
999 E Street, NW, 6th Floor
Washington DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
2014 MAY 12 AM 9:36
OFFICE OF GENERAL
COUNSEL

Re: Response to Complaint, MUR 6796

Dear Mr. Jordan:

On behalf of House Majority PAC ("HMP"), and Shannon Roche in her official capacity as treasurer, this letter responds to the complaint received by the Commission on March 25, 2014 and filed as Matter Under Review 6796. The complaint alleges that HMP engaged in prohibited coordination with the Largo / Mid-Pinellas Democratic Club (the "Club"), and with Alex Sink for Congress ("the Campaign"), in connection with an independent expenditure featuring a former Club officer. As an unregistered local party organization, the Club is not subject to the coordination rules, and the individual appearing in the ad was not in fact an officer of the Club. And in any case, the complaint fails to allege any specific factual allegations on which to base a coordination claim involving either the Club or the Campaign. Accordingly, the Commission should find no reason to believe that HMP violated the Federal Election Campaign Act of 1971 (the "Act") and dismiss the matter immediately.

BACKGROUND

In February 2014, HMP aired an independent expenditure ("ad") referring to David Jolly, the Republican candidate in the March 11, 2014 special election for Florida's 13th Congressional District seat.¹ The ad featured two 13th District residents, Rod and Elizabeth Snedeker, discussing their reliance on Social Security and expressing concern at troubling aspects of David Jolly's record and past statements about the federal program.²

Though Mr. Snedeker, a former minister, and Mrs. Snedeker, a retired piano teacher, are

¹ House Majority PAC, *We Saw*, YouTube (Feb. 14, 2014), https://www.youtube.com/watch?v=jGLkm_hFunA.

² *Id.*

both in their 80s, they remain civically engaged, and are members the Largo / Mid-Pinellas Democratic Club (the "Club").³ The Club is not registered with the Federal Election Commission ("FEC") as a district or local party committee.⁴ And contrary to the complaint's assertion, Mrs. Snedeker is not an officer of the club,⁵ and hasn't been since February 2013, when her two-year term as treasurer ended.⁶ HMP received the Snedekers' contact information through a Club member, which was the extent of the Club's involvement in the ad's creation.

The complaint does not allege that HMP communicated with the candidate or with any staff or agents of the Campaign in connection with the ad's production. The Campaign's only alleged contact with the Club was in January 2014, when four field organizers from the Campaign attended a Club meeting and each reportedly "spoke briefly about her territory and the goals and needs of the Sink campaign for Congress in District 13."⁷ It has not been alleged that either of the Snedekers were present at the meeting, and the complaint offers no allegations that any Campaign information provided to Club members present at this meeting was actually transmitted to HMP at any point by any Club members or officers, or that the information in any way affected the ad's production.

On these facts, the complaint alleges that HMP engaged in prohibited coordination with the Club on the content of the ad, based on the Club's suggestion of the Snedekers for the ad and Mrs. Snedeker's appearance in the ad. It also alleges coordination with the Campaign, arguing without any evidence that the Club acted as "a conduit of prohibited coordinating information" that was material to the creation of the ad's content.⁸

LEGAL DISCUSSION

A. Claims Alleging Coordination with the Club Fail to State a Violation of Law

The Commission may find "reason to believe" that a violation has occurred only "if a complaint sets forth sufficient facts, which, if proven true, would constitute a violation of

³ Alex Leary, *About that Senior Couple in Democratic Ad Attacking Jolly*, The Buzz (Feb. 17, 2014, 5:56 PM), <http://www.tampabay.com/blogs/the-buzz-florida-politics/about-that-senior-couple-in-democratic-ad-attacking-jolly/2166011>.

⁴ The complaint does not allege that the Club was a registered political committee or that it should be required to register under Commission regulations.

⁵ Largo / Mid-Pinellas Democratic Club, About Us, <http://largodemocrats.typepad.com/About%20Us.htm> (last visited May 8, 2014). The complaint relies on an outdated version of the "About Us" page that isn't linked from the home page.

⁶ *Id.*; Executive Board, Largo / Mid-Pinellas Democratic Club (Feb. 25, 2011), <http://www.largodemocrats.com/2011/02/executive-board-largomid-pinellus-democratic-club-.html> ("Officers Elected Feb. 21, 2011 for Two Year Terms" include Elizabeth Snedeker); *see also* Largo / Mid Pinellas Democratic Club, June 2013 Newsletter at 10, *available at* http://largodemocrats.typepad.com/2013_june_newsletter_v4%20%281%29.pdf (with new officers, and providing that "[a]ll of the officers were elected February 2013 to serve unto March 2015").

⁷ *See* Complaint at 2.

⁸ Complaint at 3.

the [Act]."⁹ The complaint's allegations of coordination all involve the Club or its alleged officers, and rest on the supposition that "[l]ocal party organizations that are part of the official party structure are subject to [the] coordination prohibition."¹⁰ This is simply incorrect as a matter of law, and as a consequence, the complaint presents no actual violations of the Act and must be dismissed.

The Commission's coordination standard found at 11 C.F.R. § 109.21 only applies to communications that are coordinated with "a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing...."¹¹ Because the Club is clearly not a candidate committee, the coordination rules will only apply if it qualifies as a "political party committee," a term that is generally treated as synonymous with "party committee" in Commission regulations and guidance.¹²

The Commission regulations define a "party committee" as a "political committee that represents a political party and is part of the official party structure at the national, state, or local level."¹³ Thus, only local party organizations that are also "political committees" qualify as "political party committees."¹⁴ But a local party organization is not required to register with the FEC as a "political committee" unless it exceeds any of three statutory thresholds.¹⁵ The complaint does not allege that the Club met any of these thresholds or that it otherwise should have been required to register as a political committee. The Club therefore is not, and cannot be, a political party committee subject to the rules on coordination.

⁹ Statement of Reasons of Commissioners David M. Mason, Bradley A. Smith, Karl J. Sandstrom, and Scott A. Thomas, Matter Under Review 4960 (Dec. 21, 2000) at 1.

¹⁰ Complaint at 3.

¹¹ 11 C.F.R. § 109.21(a) (emphasis added).

¹² See, e.g., *id.* § 100.87(c), (f), (g) (referring interchangeably to "party committees," "state or local political party committees" and "state or local party committees"); *id.* § 110.3(b) (provision addressing contribution limitations for party committees entitled "contribution limitations for political party committees").

¹³ *Id.* § 100.5(e)(4) (emphasis added); see also FEC, Campaign Guide for Political Party Committees 1 (Aug. 2013) (explaining that "the term party committee refers to a party unit that has qualified as a political committee under federal law, with attendant registration and reporting requirements," as distinguished from "[t]he term 'party organization' [which] refers to a party unit that has not triggered federal registration and reporting requirements.").

¹⁴ See 11 C.F.R. § 100.85 (provision on "political party committees" applies to "any political committee of a political party"); *id.* § 100.140 (providing that payments, "[i]f made by a political party committee ... shall be reported by that committee as disbursements," implying that political party committees must be federally registered political committees.).

¹⁵ 11 C.F.R. § 100.5(c); see also FEC, Local Party Activity Brochure 2 (explaining that "a local party organization must register with the FEC as a party committee only after its activity exceeds one of [three] thresholds"). Even if a group exceeds one of the registration thresholds, the Commission will not impose political committee status on an entity unless its "major purpose" is the nomination or election of federal candidates. See *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986); *Buckley v. Valeo*, 424 U.S. 1, 78-79; *Political Committee Status*, 69 Fed. Reg. 68,056, 68,065 (Nov. 23, 2004) ("The 'major purpose' test is a judicial construct that limits the reach of the statutory triggers in FECA for political committee status.")

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This is consistent with the treatment of unregistered local party organizations throughout the Act. These groups are not presumed to be affiliated with registered party committees in their state under the Commission's aggregation rules,¹⁶ and they are not permitted to exercise coordinated party expenditure authority.¹⁷ This reflects the desire of Congress to "place the fewest restrictions and administrative burdens on those groups that are least likely to need them, i.e., local political organizations which are either primarily involved in State and/or local elections or which are active in campaigns for Federal office, but on a very limited or seasonal basis."¹⁸ Complainant's misreading of the law would force local political groups to choose between affiliating themselves with a Party and retaining their ability to work and collaborate with outside groups. It would also place serious burdens on the associational rights of individual members like the Snedekers, by subjecting their communications and activities to federal scrutiny based solely on their membership in a Party-affiliated organization, regardless of whether that organization has actually demonstrated any major purpose of influencing federal elections.

The complaint also alleges that HMP coordinated with the Campaign. However, the complaint never actually alleges any contact between an agent of the Campaign and HMP. Instead, it alleges only that the Club could be a "conduit of prohibited coordinating information."¹⁹ But the complaint does not allege that the Campaign intended the Club to pass on material non-public information; nor does the complaint allege that the Club became an agent of the Campaign within the meaning of 11 C.F.R. § 109.3. Even if there was any allegation regarding specific information received by HMP – and there is none – the Commission's definition of coordinated conduct simply does not include the mere passing along of information by persons not "agents" of a candidate or political party committee.

Therefore, the legal theory of the complaint relies entirely on the Club's status as a political party committee under Commission rules. Because that is simply false, the complaint must be dismissed.

B. The Complaint Does Not Offer Sufficient Specific Factual Allegations on Which to Base a Coordination Claim

Even if the Club were a political party committee, the complaint offers no facts on which to base a claim that the "conduct prong" for any charge of coordination has been met.

The complaint asserts that the Campaign staffers' visit to the Club constituted "substantial discussion" under 11 C.F.R. § 109.21(d)(3) of the coordination rules, and that "this made

¹⁶ See 11 C.F.R. § 110.3(b)(3)(i), (ii); Advisory Opinions 1999-04 and 1978-09.

¹⁷ 11 C.F.R. § 109.37(b); *see also* Local Party Activity Brochure at 9 ("Coordinated expenditures ... are only made on behalf of the party's general election nominees by party committees registered with the FEC. Thus, if a local party organization wished to receive a transfer of coordinated party expenditure authority from the national or state party committee, it would first have to register as a local party committee.")

¹⁸ See Advisory Opinion 1978-09 (explaining that the Commission "will avoid rulings which unjustifiably discourage party activity, especially at the local level.").

¹⁹ Complaint at 3.

the [Club] a conduit of prohibited coordinating information – from the Sink Campaign to [HMP] – material to [HMP]'s creation and distribution of [the ad]."²⁰ Putting aside the question of whether the information provided at the meeting actually constituted non-public information about the candidate's plans, projects, activities, or needs, a discussion is considered substantial only if the information (1) is conveyed to a person paying for the communication, and (2) that information is material to the creation, production, or distribution of the communication.²¹ But the complaint does not allege any specific facts that, if proven true, would establish that the Club did in fact transmit Campaign information to HMP, or that this information was actually material to any aspect of the ad. The law "does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges."²²

The complaint also provides no support for the allegations that the Club "assented to" or was "materially involved" in the ad's content through the involvement of the Snedekers.²³ The complaint seems to assume that Mrs. Snedeker's participation in the ad was as an agent of the Club, which translated into *de facto* "material involvement" by the Club. But under the coordination rules, an individual must have actual authority to engage in any of a set of specified activities on behalf of the entity to qualify as an agent.²⁴ Ms. Snedeker was not an officer of the Club at the time of her involvement in HMP's ad, and the complaint fails to allege any other basis for presuming that Mrs. Snedeker had such authority.

Even if she were an officer, the complaint still offers no facts supporting a claim that the Snedekers were actually acting on the Club's behalf when they participated in the ad, and in fact the ad itself indicates they were acting on their own behalf. The Snedekers appear in the ad in their capacities as private citizens and district residents, and the ad's content draws on their personal biographies and concerns.²⁵ Membership in a group, even as an officer, does not create a presumption that all of an individual's actions are on behalf of

²⁰ Complaint at 3.

²¹ 11 C.F.R. § 109.21(d)(3).

²² Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn, Matter Under Review 6056 (Protect Colorado Jobs) at 6 n.12.

²³ 11 C.F.R. § 109.21(d)(1), (2).

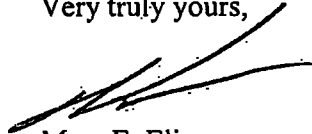
²⁴ *Id.* § 109.3(a)(1)-(5). Specifically, an agent must have the authority to (1) to request or suggest that a communication be created, produced, or distributed; (2) to make or authorize a communication that meets one or more of the content standards set forth in 11 C.F.R. § 109.21(c); (3) to create, produce, or distribute any communication at the request or suggestion of a candidate; (4) to be materially involved in decisions regarding various aspects of the communication's content, form and distribution; or (5) to make or direct a communication that is created, produced, or distributed with the use of material or information derived from a substantial discussion about the communication with a candidate. *Id.*

²⁵ They also did not describe their decision to participate in partisan terms. Mr. Snedeker explained that "we're not concerned with Social Security because we're Democrats. We're concerned with Social Security because we depend on it." Alex Leary, *About that Senior Couple in Democratic Ad Attacking Jolly*, The Buzz (Feb. 17, 2014, 5:56 PM), <http://www.tampabay.com/blogs/the-buzz-florida-politics/about-that-senior-couple-in-democratic-ad-attacking-jolly/2166011>.

that group.²⁶

For the reasons set forth, the Commission should dismiss the complaint and close the file.

Very truly yours,



Marc E. Elias
Ezra W. Reese
Daniel B. Nudelman
Counsel to House Majority PAC

²⁶ See e.g., Prohibited and Excessive Contributions, 67 Fed. Reg. 49,064, 49,083 (July 29, 2002) (allowing nonfederal fundraising by state party chairmen who also serve as members of their national party committees under the rationale that "it is clear that individuals... can, consistent with BCRA, wear multiple hats..."); see also *McConnell v. FEC*, 540 U.S. 93, 161 (2003) (affirming that fundraising restrictions apply to national party committee officers only when they acted on behalf of the party, and that they "may ... solicit soft money in their unofficial capacities").